Supreme Court, U.S.
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No. 83-1938 (3)

In the Supreme Court of the United States

OCTOBER TERM, 1984

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPELLANT

v.

WESTINGHOUSE ELECTRIC CORP.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REPLY MEMORANDUM FOR THE APPELLANT

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Contrary to appellee's repeated contention (Mot. to Aff. 1, 4-5, 6, 10), this case is identical to *EEOC* v. *Allstate Insurance Co.*, No. 83-1021 (June 11, 1984), in which the Court dismissed the direct appeal by the Equal Employment Opportunity Commission for lack of jurisdiction under 28 U.S.C. 1252. It follows that the direct appeal in this case should be dismissed for lack of jurisdiction as well.

That this case is controlled by *Allstate* is evident from the district court's brief judgment order dismissing the EEOC's Equal Pay Act enforcement action. See J.S. App. 1a-2a. The district court first stated that it was acting "[u]pon further consideration" of this Court's decision in *INS* v. *Chadha*, No. 80-1832 (June 23, 1983), which the district court described as holding that "a one-house veto provision that is legislative in purpose and effect is subject to the

procedures set out in Article I of the United States Constitution" (J.S. App. 1a). The district court then stated that it also was acting "[u]pon further consideration" of the district court's decision in *Allstate* and that a copy of the decision in *Allstate* was "made a part hereof" — *i.e.*, was incorporated as the basis for the dismissal of the EEOC's enforcement action in this case (J.S. App. 1a-2a). Because the EEOC's direct appeal in *Allstate* was dismissed for lack of jurisdiction, the EEOC's appeal from the district court's judgment order in this case that simply incorporates the reasoning in *Allstate* must be dismissed as well.

Appellee contends that this case differs from *Allstate* because it argued below that, even if the legislative veto provision in the Reorganization Act is severable from the remainder of the Act, the transfer of enforcement authority to the EEOC nevertheless was invalid. In appellee's view, the remainder of the Reorganization Act is unconstitutional because it would allow the President to "effectively amend" the Equal Pay Act without affirmative bicameral action. Mot. to Aff. 6-8. This contention is without merit. It is the basis of the district court's decision, not appellee's arguments, that is relevant here. *United States* v. *Raines*, 362 U.S. 17, 20 (1960). The district court explicitly adopted the reasoning of the district court in *Allstate*, in which the court dismissed the enforcement action on the ground that the one-House veto provision is unconstitutional and inseverable from the remainder of the Reorganization Act. *EEOC* v. *Allstate Insurance Co.*, 570 F. Supp. 1224, 1228-1232 (S.D. Miss. 1983). The district court in *Allstate* did not find the remainder of the Reorganization Act unconstitutional on any other grounds — *e.g.*, on the ground, urged by appellee, that it would be unconstitutional for Congress to vest the President with authority to transfer enforcement authority from one Executive agency to another. There likewise is no suggestion that the district court's judgment in

this case rested on that ground; it simply incorporated the reasoning of the district court in *Allstate*.[1]

For the foregoing reasons and the additional reasons stated in the Jurisdictional Statement, it is respectfully submitted that the appeal should be dismissed for lack of jurisdiction under 28 U.S.C. 1252.

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AUGUST 1984

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[1]Appellee's assertion (Mot. to Aff. 7 n.8) that this case is distinguishable from *Allstate* because there the district court explicitly addressed the severability issue but in this case the district court did not do so is rather disingenuous, since the court in this case appended and incorporated the district court's opinion in *Allstate* that *did* discuss that issue.

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